

DANIEL G. BOGDEN
United States Attorney
District of Nevada

PATRICK A. ROSE
Assistant United States Attorney
Nevada Bar No. 5109
333 Las Vegas Blvd. South, Suite 5000
Las Vegas, Nevada 89101
Phone: (702) 388-6336
Fax: (702) 388-6787
Patrick.Rose@usdoj.gov

Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARY MAUREEN MINSHEW

Plaintiff,

v.

THE HONORABLE MICHAEL B.
DONLEY, SECRETARY OF THE AIR
FORCE, GEORGE SALTON, LT. COL.
KURT BERGO, AND ALPHA-OMEGA
CHANGE ENGINEERING, A VIRGINIA
CORPORATION

Defendants.

Case No. 2:10-cv-01593-PMP-PAL

CONSENT PROTECTIVE ORDER

Without admission or waiver by any party, the general nature of this action is as follows. Plaintiff Mary Maureen Minshew ("Plaintiff" or "Minshew") is a former employee of the United States Air Force ("Air Force"), as well as a former employee of Defendant Alpha-Omega Change Engineering ("Alpha-Omega"). This action arises from Plaintiff having been hired and then quickly fired by Alpha-Omega with respect to work performed by Alpha-Omega at Nellis Air Force Base ("Nellis") in Las Vegas, Nevada. As against the Federal Defendants, Minshew has asserted the following claims: a Title VII/ADEA retaliation claim against the Secretary of the Air

1 Force ("Secretary"); and a *Bivens* due process claim against Col. Bergo and Mr. Salton in their
2 individual capacities.¹ Minshew also currently has pending a motion to amend her Complaint to
3 add claims against the Secretary under the Privacy Act, 5 U.S.C. § 552a. As against Alpha-
4 Omega, Plaintiff has asserted a claim under 42 U.S.C. § 1985(3), as well as several state law
5 claims for relief. The parties anticipate that discovery will involve personnel, medical, and other
6 records that are likely to contain confidential information including, but not limited to, records
7 and information protected by the Privacy Act, and the Health Insurance Portability and Protection
8 Act.

9 Through this protective order, the parties seek to address the handling of such personnel,
10 medical, and other records that are likely to contain confidential information including, but not
11 limited to, records and information protected by the Privacy Act and the Health Insurance
12 Portability and Protection Act. In order to permit the parties to discover and disclose to each
13 other such confidential records as is relevant to this case, and pursuant to Rule 26 of the Federal
14 Rules of Civil Procedure, the parties stipulate and consent to the following:

15 **IT IS HEREBY ORDERED** that, pursuant to this protective order, the Federal
16 Defendants are authorized to release to other parties in this case records and information
17 otherwise protected by the Privacy Act without obtaining prior written consent of the
18 individual(s) to whom such records pertain, provided that such information is reasonably related
19 to this litigation. Nothing in the Order is intended to limit or preclude in any way the Federal
20 Defendants' existing rights to access and review documents containing Privacy Act information.

21 ...

22 ...

23 ...

25 ¹ *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388
26 (1971).

1 **IT IS FURTHER ORDERED** as follows:

2 Counsel for the parties expect that most, if not all, records to be exchanged during
3 discovery are likely to constitute or contain personnel, medical, or other confidential information
4 including, but not limited to, that protected by the Privacy Act or the Health Insurance Portability
5 and Protection Act. Counsel therefore agree that all records exchanged by the parties during
6 discovery shall be deemed CONFIDENTIAL and treated as such under this Order unless
7 otherwise agreed by Counsel or ordered by the Court.

8 1. Accordingly, although not required, but for good measure, Counsel may also mark
9 records subject to this Order with the notation "CONFIDENTIAL" on them or by an appropriate
10 letter identifying the records.

11 2. CONFIDENTIAL records under this Order shall be shown only to (i) the parties,
12 Counsel for the parties, consultants, and expert witnesses, as well as staff in their employ with a
13 need for access in order for each party to prosecute or defend this action including, but not
14 limited to, paralegals, legal assistants, and nurses; (ii) the judges of this Court, the Court's staff,
15 and the trier of fact as necessary for this case to proceed through the litigation process and for
16 this case, or issues or claims therein, to be heard and adjudicated; (iii) qualified persons recording
17 and transcribing depositions, as well as deponents questioned about CONFIDENTIAL records;
18 and (iv) any other persons mutually authorized by all Counsel to examine such materials.
19 Counsel shall inform such persons of the confidential nature of the records and that such records
20 are subject to this protective (non-disclosure) Order. Consultants and expert witnesses retained
21 by the parties or Counsel shall sign an acknowledgment in accordance with the last paragraph of
22 this Order.

23 3. Unless Counsel agree that a particular deposition does not involve any
24 CONFIDENTIAL records or information, deposition transcripts shall be treated as
25 CONFIDENTIAL records subject to the terms of this Order.

26 ...

1 4. Except as provided herein, no person having access to CONFIDENTIAL records
2 subject to this Order shall reveal to any person not named in paragraph 2 any such records or
3 information contained in such records without further order of the Court or stipulation of the
4 parties.

5 5. Paragraph NOT APPROVED per Judge Leen.
6
7
8
9
10
11
12

13 6. Within sixty (60) days of the conclusion of all trial and appellate proceedings in
14 this case, Counsel for the receiving party(ies) shall either (i) return to Counsel for the producing
15 party(ies) all CONFIDENTIAL records and copies of same or (ii) certify to Counsel for the
16 producing party(ies) that all CONFIDENTIAL records and copies of same have been destroyed.

17 7. This Order is without prejudice to the rights of any party to introduce, or object to
18 the introduction, into evidence at trial or during summary judgment proceedings any materials
19 that are subject to this Order.

20 8. This Order is without prejudice to the rights of any party to make any objections
21 to discovery requests as permitted by the Federal Rules of Civil Procedure, statute or other
22 authority.

23 9. Counsel shall confer in good faith as to any dispute concerning the terms or
24 implementation of this Order. If, despite such good faith efforts, Counsel are unable to resolve
25 such a dispute, Counsel may seek adjudication from the Court through appropriate motion. Until
26 any such dispute is adjudicated by the Court, Counsel and the parties shall continue to treat the

1 applicable material(s) as CONFIDENTIAL in accordance with the terms of this Order.

2 10. Each person retained as a consultant or expert witnesses, to whom is disclosed
3 CONFIDENTIAL records, shall sign and date an acknowledgment, substantially in the form as
4 that attached hereto, affirming that they have read and agree to be bound by the terms of this
5 Order, and a copy of same shall be served on Counsel for the other parties.

6
7 
8 **UNITED STATES MAGISTRATE JUDGE**
DATED: March 9, 2011

9
10 CONSENTED TO:

11 THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISINGER

12 // S // DEBORAH L. ELSASSER

13 Deborah L. Elsasser
14 Nevada Bar #5294
1100 East Bridger Avenue
Las Vegas, NV 89101
(702) 366-0622
(702) 366-0327 - Facsimile
dle@thorndahl.com

16 and

17 Kelly R. Dahl
BAIRD HOLM LLP
1700 Farnam Street
1500 Woodmen Tower
Omaha, NE 68102

19 (402) 636-8223
(402) 344-0588 - Facsimile
20 kdahl@bairdholm.com
Attorneys for Plaintiff
21 Mary Maureen Minshew

ANDERSON, McPHARLIN & CONNORS LLP

//S// BRIAN L. BRADFORD

Brian L. Bradford
Nevada Bar #9518
777 N. Rainbow Blvd., Suite 145
Las Vegas, NV 89107
(702) 479-1010
(702) 479-1025 - Facsimile
blb@amclaw.com

and

J. Brooke Spotswood
SPOTSWOOD LAW
75A Main Street
Mathews, VA 23109
Attorneys for Defendant
Alpha-Omega Change Engineering, Inc.

Daniel G. Bogden
United States Attorney

//S// PATRICK A. ROSE

Patrick A. Rose
Assistant United States Attorney
333 Las Vegas Blvd. South, Suit 5000
Las Vegas, Nevada 89101
Phone: (702) 388-6336
patrick.rose@usdoj.gov
Attorneys for the Federal Defendants